

Advisory Opinion
16-03-POFD
Fairbanks North Star Borough

Presented by:
Paul Dauphinais
Executive Director

[06]

ADVISORY OPINION REQUEST

Number: AO 16-03-POFD
Requested By: Noah Klein, for Fairbanks North Star Borough
Prepared By: Paul Dauphinais, Executive Director
Date Issued: April 18, 2016
Subject: Exempting specific municipal officers from POFD requirements
Commission Decision:

I. QUESTION(S) PRESENTED

May a municipality exempt specific classes of municipal officers from the public official financial reporting requirements of AS 39.50? More specifically, can the borough place unpaid municipal officers, in this specific instance planning/zoning commission members and elected utility board members, on a ballot for a vote on their exemption as noted in AS 39.50.145?¹

II. SHORT ANSWER

Yes, given that any exemption is approved as per the procedure outlined in AS 39.50.145; and with the understanding that an exemption for a specific position does not exempt an individual who may occupy two offices and have reporting requirements under a second non-exempted office. As an example, a member of the planning and zoning commission who is also a member of the borough assembly would still be required to file as an assembly member.

III. FACTS

On April 12, 2016, staff received an email advisory opinion request from Noah Klein, Assistant Borough Attorney for Fairbanks North Star Borough. The request addressed the potential for the borough to ask voters to decide whether only the borough's unpaid municipal officers (in this instance planning commissioners and elected utility board members) could be exempted from the requirement to provide a Public Official Financial Disclosure (POFD) statement as per AS 39.50. This request is made prior to the printing of the borough's 2016 municipal election ballot.

The governing statute, AS 39.50, states, "each appointed or elected municipal officer" is a public official.² The term municipal officer "includes a borough or city mayor, borough assemblyman, city councilman, school board member, elected utility board member, city or borough manager, members of a city or borough planning or zoning commission within a home rule or general law city or borough, or a unified municipality".³ The municipal officers listed are required to complete a POFD annually, within 30 days of assuming office, and within 90 days of leaving office.⁴

¹ See Exhibit A (e-mailed Advisory Opinion request from Noah Klein).

² AS 39.50.200(a)(9)(I).

³ AS 39.50.200(a)(8).

⁴ AS 39.50.020 (a)

Statutes provide that, “A municipality may exempt its municipal officers from the requirements of this chapter if a majority of the voters voting on the question at a regular election, as defined by AS 29.71.800(20), or a special municipality-wide election, vote to exempt its municipal officers from the requirements of this chapter. The question of exemption from the requirements of this chapter may be submitted by the city council or borough assembly by ordinance or by initiative election.”⁵

There are some differences in filing requirements for municipal filers as opposed to other public officials. Municipal officials are not required to disclose information relating to a domestic partner, although they are required to disclose information regarding a spouse.⁶ Many municipal filers are able to file their disclosure reports via a paper form and not electronically if they are in a municipality with a population of under 15,000.⁷ Municipal filers are required to file their reports with the municipal clerk and not directly with APOC, although many do file electronically and provide a copy to their clerk.⁸ There are other differences for municipal filers delineated in regulations.⁹

To date 129 municipalities have opted out of POFD reporting for their municipal officials. Thirty nine municipalities continue to file POFDs with APOC accounting for approximately 675 filers excluding candidates.¹⁰ A very brief survey of selected communities shows that some of the municipalities that have opted out do have a local form, although others may not have such a local form.¹¹

IV. ANALYSIS.

In response to this request, staff reviewed the POFD disclosure statutes regarding municipal filers and the exemption requirements. Staff also searched for any past APOC interpretations. There are no specific complaints or advisory opinions to refer to on this issue; although some earlier decisions and opinions have some bearing on this matter.¹² There have been instances

⁵ AS 39.50.145.

⁶ AS 39.50.030(f); AS 39.50.200(4) defines “domestic partner” as “a person who is cohabiting with another person in a relationship that is like a marriage but that is not a legal marriage”.

⁷ AS 39.50.050(a).

⁸ AS 39.50.020(b).

⁹ 2 AAC 50.850(f), (g), and (h).

¹⁰ See Exhibit B for the current list of municipalities that have opted out of POFD reporting for municipal officers and a current list of municipalities who continue to report to APOC. There are more municipalities in the state than the 168 enumerated in the exhibit. Many of the municipalities not on the exhibit use the local borough and its officers as their municipal government and note that on the Community, Commerce, and Economic Development website.

¹¹ For instance, Homer, Seward, and the City of Fairbanks have local forms for municipal officers to complete. Some other municipalities rely on a local ethics code. Staff did not conduct an exhaustive review of what all municipalities do in this regard.

¹² Staff did find material regarding specific items on a municipal POFD filing (AO 10-14-POFD, Isaacson), that some positions not enumerated in AS 39.50.200 did not have a filing requirement (AO 11-11-CD) while others not specifically enumerated are required to report (AO 14-20-POFD, Sturrock). Complaints included 84-08-COI where municipal officers who filed COI statements were alleged to have made decisions that profited them personally and 86-05-COI where there was an allegation of an assembly member voting on an issue that benefitted the member’s employer, among many other complaints. There were 35 COI/POFD complaints from 1983 to 2000, and 21 from 2001 to present.

where the Commission has sent Conflict of Interest (COI, the older term for POFD) complaints to the attorney general for prosecution as misdemeanors because of alleged personal gain by municipal officials; although small penalties and dismissals are far more common and approximately equally distributed.¹³

In AO 09-04-POFD the Commission decided on whether a dependent child was required to provide information regarding a position in a non-profit educational organization. The Commission also noted that AS 39.50 contained “the declaration that ‘the public has a right to know of the *financial and business interests* of person [sic] who seek or hold public office’”.¹⁴ The opinion went on to note that even non-profit organizations could be considered businesses for the purposes of AS 39.50,¹⁵ so that even missing a profit motive certain activities in the not-for-profit realm could be reportable. Based on this advisory opinion the lack of payment may not be sufficient cause to potentially exempt a “class” of municipal officers. However, exempting all municipal officers, as could occur under AS 39.50.145, would indeed exempt those that are not paid as well as those who are paid.

In 1993 the Commission rejected a staff advisory opinion draft that would have had the members of area service boards in a third class municipality file POFDs (then called Conflict of Interest statements (COI)).¹⁶ Some of the positions in question in the current request are similar to those discussed in the 1993 opinion.

The issue of the public having the right to know the financial and business interests of those seeking or holding public office is a theme throughout the POFD complaints and advisory opinions. This theme was brought to an extreme in 2014 when over 200 complaints were filed concerning attendees at a fishing event on the Kenai Peninsula. That large number of filings resulted in three complaints being accepted with one of those being dismissed and two more resulting in small fines.¹⁷ This group of complaints considered issues of not reporting gifts on a POFD which was required, but the gifts were properly reported via the Executive Ethics Act.

The point of this extended review is to show that there are instances where both municipal and state filers may report in different circumstances and that the Commission has historically viewed the public’s right to have the information provided on a POFD as a very high bar it has been reluctant to lower. Each instance, complaint or advisory opinion, is taken in its own context before a decision is made.

The Commission’s continued theme of enabling the information to be available to the public is consistent with the purpose stated in AS 39.50.010. However, the ability to totally opt out of reporting by a municipality is enabled by statute and is a decision made locally. Moreover, the Commission decision of September 21, 2015 provides formal guidance regarding making the POFDs of municipal filers, members of state boards and commissions, and members of the judiciary available upon request, but not available to the public on line.¹⁸ This order provides

¹³ Complaint 93-01-COI was referred to the Attorney General.

¹⁴ AO 09-04-POFD, page 2. Emphasis in the original.

¹⁵ Ibid, p3.

¹⁶ Exhibit C, Advisory Opinion 1993 Haines Borough.

¹⁷ See complaints 14-08, 09, and 10-POFD.

¹⁸ Exhibit D, Commission Order of September 21, 2015 regarding online availability of POFDs.

that the information will be available to the public while providing limited relief to the possible chilling effect making one's financial and business interests open to public scrutiny may have on potential public service.

APOC staff has found that dealing with the municipal portion of POFD filing has been very time consuming. Staff also believes that these filings may be an administrative burden for some municipalities. Over the past two years the majority of civil penalty assessments for POFD filers have been issued to municipal filers with most of those being annual filings.

It appears that, thus far, municipalities who have exempted municipal officers under AS 39.50.145 have applied the exemption to all of their municipal officers. Nonetheless, staff can find no reason in statute or regulation, or other compelling state interest, to conclude that a municipality cannot exempt certain municipal officers and not others under the process delineated in AS 39.50.145. Whether the municipal positions are paid or unpaid is irrelevant.

V. CONCLUSION

Fairbanks North Star Borough may seek to exempt specific municipal officer positions from POFD filing requirements as per the process in AS 39.50.145.

If approved this action could have several different consequences which are worth noting, but not reason to disapprove the advisory opinion request.

First, this could place a larger burden on borough management to ensure that specific filers are reminded that they are required to file an annual or other POFD by parsing out specific positions to be exempted rather than maintaining the list as currently defined in AS 39.50.200. It could also be confusing to filers who may have reporting requirements for other municipal or state-wide positions. It could also lead to a more complex set of issues at the municipal level concerning who is and is not required to file a POFD.

Second, other municipalities could also exempt specific positions, although different from the set of positions contemplated here. If that happens, it will potentially create communication issues for both the municipalities and APOC staff. One of the current time consuming issues is communicating with municipalities to remind clerks of the various filing deadlines. Often, municipal clerks appear to experience a very high rate of turnover. This turnover creates a void in institutional knowledge and may lead to additional issues in gaining compliance from municipalities and the potential for more late filed reports, something all parties work to avoid.

Finally, if other municipalities exempt different sets of municipal officers it could lead to administrative issues for APOC staff. Even with a uniform set of positions that file it is often quite difficult and time consuming for APOC staff to have a complete set of filers' names for each municipality. Different municipalities exempting different positions will make tracking which positions report for which municipality a much more difficult task.

VI. COMMISSION DECISION

Only the Commission has the authority to approve an advisory opinion. 2 AAC 50.840. The Commission will rule on staff's proposed advice at its next regular meeting. The Commission may approve, disapprove, or modify the proposed advice. An advisory opinion must be approved by an affirmative vote of at least four members or it will be considered disapproved. Both staff's proposed advice and the Commission's final advisory opinion apply only to the specific facts and activity for which advice was requested.

If you rely on staff's proposed advisory opinion in good faith and the Commission subsequently rejects the proposed advice, staff will take no enforcement action on your activities up to that point if you acted under the specific facts described. If you have any additional questions or would like to discuss this proposed advice, please contact APOC at (907) 276-4176.

Statutes and Regulations Cited

Sec. 39.50.010. Findings and purpose. (a) It is declared by the people of the State of Alaska that the purposes of this chapter are

(1) to discourage public officials from acting upon a private or business interest in the performance of a public duty;

(2) to assure that public officials in their official acts are free of the influence of undisclosed private or business interests;

(3) to develop public confidence in persons seeking or holding public office, enhance the dignity of the offices and make them attractive to citizens who are motivated to public service; and

(4) to develop accountability in government by permitting public access to information necessary to judge the credentials and performance of those who seek and hold public office.

(b) The people of the State of Alaska declare that

(1) public office is a public trust that should be free from the danger of conflict of interest;

(2) the public has a right to know of the financial and business interests of persons who seek or hold public office;

(3) a compelling state interest requires that candidates for office and office holders disclose their personal and business financial interests;

(4) reasonable disclosure requirements do not violate an individual's right to privacy when the individual seeks or holds public office and a compelling state interest in the disclosure exists; and

(5) reasonable disclosure requirements do not have the effect of chilling the exercise of the right of a qualified person to seek or hold public office.

Sec. 39.50.020. Report of financial and business interests. (a) A public official other than the governor or the lieutenant governor shall file a statement giving income sources and business interests, under oath and on penalty of perjury, within 30 days after taking office as a public official. Candidates for state elective office other than a candidate who is subject to [AS 24.60](#) shall file the statement with the director of elections at the time of filing a declaration of candidacy or a nominating petition or becoming a candidate by any other means. Candidates for elective municipal office shall file the statement at the time of filing a nominating petition, declaration of candidacy, or other required filing for the elective municipal office. Refusal or failure to file within the time prescribed shall require that the candidate's filing fees, if any, and filing for office be refused or that a previously accepted filing fee be returned and the candidate's name removed from the filing records. A statement shall also be filed by public officials no later than March 15 in each following year. On or before the 90th day after leaving office, a former public official shall file a final statement covering any period during the official's service in that office for which the public official has not already filed a statement. Persons who are members of boards or commissions not named in [AS 39.50.200\(b\)](#) are not required to file financial statements.

(b) A public official or former public official other than an elected or appointed municipal officer shall file the statement with the Alaska Public Offices Commission. Candidates for the office of governor and lieutenant governor and, if the candidate is not subject to [AS 24.60](#), the legislature shall file the statement under [AS 15.25.030](#) or 15.25.180. Municipal officers, former municipal officers, and candidates for elective municipal office, shall file with the municipal

clerk or other municipal official designated to receive their filing for office. All statements required to be filed under this chapter are public records.

Sec. 39.50.030. Contents of statements. (a) Each statement must be an accurate representation of the financial affairs of the public official or candidate and must contain the same information for each member of the person's family, as specified in (b) and (d) of this section, to the extent that it is ascertainable by the public official or candidate.

(b) Each statement filed by a public official or candidate under this chapter must include the following:

(1) for all sources of income over \$1,000 during the preceding calendar year, including taxable capital gains, and for all gifts from a single source with a cumulative value exceeding \$250 in a calendar year, received by the person, the person's spouse or domestic partner, or the person's dependent child,

(A) each source of the income or gift;

(B) the recipient of the income or gift;

(C) the amount of the income or value of the gift;

(D) a brief statement describing whether the income was earned by commission, by the job, by the hour, or by some other method;

(E) the approximate number of hours worked to earn the income; and

(F) unless required by law to be kept confidential, a description sufficient to make clear to a person of ordinary understanding the nature of each service performed and the date the service was performed;

(2) the identity, by name and address, of each business in which the person, the person's spouse or domestic partner, or the person's dependent child has an interest or was a stockholder, owner, officer, director, partner, proprietor, or employee during the preceding calendar year, except that an interest of less than \$1,000 in the stock of a publicly traded corporation need not be included;

(3) the identity and nature of each interest in real property, including an option to buy, owned at any time during the preceding calendar year by the person, the person's spouse or domestic partner, or the person's dependent child;

(4) the identity of each trust or other fiduciary relationship in which the person, the person's spouse or domestic partner, or the person's dependent child held a beneficial interest exceeding \$1,000 during the preceding calendar year, a description and identification of the property contained in each trust or relation, and the nature and extent of the beneficial interest in it;

(5) any loan or loan guarantee of more than \$1,000 made to the person, the person's spouse or domestic partner, or the person's dependent child, and the identity of the maker of the loan or loan guarantor and the identity of each creditor to whom the person, the person's spouse or domestic partner, or the person's dependent child owed more than \$1,000; this paragraph requires disclosure of a loan, loan guarantee, or indebtedness only if the loan or guarantee was made, or the indebtedness incurred, during the preceding calendar year, or if the amount still owing on the loan, loan guarantee, or indebtedness was more than \$1,000 at any time during the preceding calendar year;

(6) a list of all contracts and offers to contract with the state or an instrumentality of the state during the preceding calendar year held, bid, or offered by the person, the person's spouse or domestic partner, or the person's dependent child, a partnership, limited liability company, or professional corporation of which the person is a member, or a corporation in which the person or the person's spouse, domestic partner, or dependent child, or a combination of them, hold a controlling interest; and

(7) a list of all mineral, timber, oil, or any other natural resource lease held, or lease offer made, during the preceding calendar year by the person, the person's spouse or domestic partner, or the person's dependent child, a partnership, limited liability company, or professional corporation of which the person is a member, or a corporation in which the person or the person's spouse, domestic partner, or dependent child, or a combination of them, holds a controlling interest.

(c) *[Repealed, Sec. 26 ch 25 SLA 1975]*.

(d) In addition to the requirements of (b) of this section, each statement filed under this chapter by a public official in the executive branch of state government other than the chair or a member of a state commission or board must include a disclosure of the formation or maintenance of a close economic association involving a substantial financial matter as required by this subsection. The disclosure must be sufficiently detailed so that a reader can ascertain the nature of the association. A public official shall disclose a close economic association with

- (1) a legislator;
- (2) a public official who is not an elected or appointed municipal officer;
- (3) a lobbyist; or
- (4) a public officer if the person required to make the disclosure is the governor or the lieutenant governor.

(e) If a public official required to disclose a close economic association under (d) of this section forms a close economic association after the date on which the public official files the financial disclosure statement required by (a) of this section, disclosure of the association must be made to the commission within 60 days after the formation of the association.

(f) When making a disclosure under (d) of this section concerning a relationship with a lobbyist to whom the public official is married or who is the public official's domestic partner, the public official shall also disclose the name and address of each employer of the lobbyist and the total monetary value received from the lobbyist's employer. The public official shall report changes in the employers of the spouse or domestic partner within 48 hours after the change. In this subsection, "employer of the lobbyist" means the person from whom the lobbyist received money, or goods or services having a monetary value, for engaging in lobbying on behalf of the person.

(g) The requirements in this section for disclosures related to a person's domestic partner do not apply to an elected or appointed municipal officer.

(h) In this section,

- (1) "close economic association" means a financial relationship that exists between a public official required to disclose a close economic association under (d) of this section and some other person or entity, including a relationship where the public official serves as a consultant or advisor to, is a member or representative of, or has a financial interest in an association, partnership, limited liability company, business, or corporation;
- (2) "lobbyist" has the meaning given in [AS 24.60.990\(a\)](#);
- (3) "public officer" has the meaning given in [AS 39.52.960](#).

Sec. 39.50.050. Administration and inspection. (a) The Alaska Public Offices Commission created under [AS 15.13.020\(a\)](#) shall administer the provisions of this chapter. The commission shall prepare and keep available for distribution standardized forms on which the reports required by this chapter shall be filed. The commission shall print the forms provided under this section so that the front and back of each page have the same orientation when the page is rotated on the vertical axis of the page. The commission shall require that the information required under this chapter be submitted electronically but may, when circumstances warrant an exception,

accept any information required under this chapter that is typed in clear and legible black typeface or hand-printed in dark ink on paper in a format approved by the commission or on forms provided by the commission and that is filed with the commission. A municipal officer for a municipality with a population of less than 15,000 shall submit information required under this chapter either electronically or typed or hand-printed in the manner described in this subsection.

(b) The commission shall adopt regulations to implement and interpret the provisions of this chapter. Regulations or interpretation shall be within the intent and purpose of this chapter and are subject to judicial review under [AS 44.62](#) (Administrative Procedure Act).

(c) Reports filed under this chapter shall be kept on file for at least six years and are public records.

(d) *[Repealed, Sec. 35 ch 126 SLA 1994].*

Sec. 39.50.145. Participation by municipalities. A municipality may exempt its municipal officers from the requirements of this chapter if a majority of the voters voting on the question at a regular election, as defined by [AS 29.71.800](#)(20), or a special municipality-wide election, vote to exempt its municipal officers from the requirements of this chapter. The question of exemption from the requirements of this chapter may be submitted by the city council or borough assembly by ordinance or by initiative election.

Sec. 39.50.200. Definitions. (a) In this chapter,

(1) "assistant to the governor or the lieutenant governor" includes any executive, legislative, special, administrative, or press assistant to the governor or lieutenant governor, and any person similarly employed in a policy-making position;

(2) "child" includes a biological child, an adopted child, and a stepchild;

(3) "commission" means the Alaska Public Offices Commission created under [AS 15.13.020](#)(a);

(4) "domestic partner" means a person who is cohabiting with another person in a relationship that is like a marriage but that is not a legal marriage;

(5) "instrumentality of the state" means a state department or agency, whether in the legislative, judicial, or executive branch, including the University of Alaska;

(6) "judicial officer" means a person appointed as a justice to the supreme court or as a judge to the court of appeals, superior court, district court, or magistrate court;

(7) "mother or father" includes a biological parent, an adoptive parent, and a stepparent;

(8) "municipal officer" includes a borough or city mayor, borough assemblyman, city councilman, school board member, elected utility board member, city or borough manager, members of a city or borough planning or zoning commission within a home rule or general law city or borough, or a unified municipality;

(9) "public official" means

(A) a judicial officer;

(B) the governor or the lieutenant governor;

(C) a person hired or appointed in a department in the executive branch as

(i) the head or deputy head of the department;

(ii) the director or deputy director of a division;

(iii) a special assistant to the head of the department;

(iv) a person serving as the legislative liaison for the department;

(D) an assistant to the governor or the lieutenant governor;

(E) the chair or a member of a state commission or board;

(F) state investment officers and the state comptroller in the Department of Revenue;

(G) the chief procurement officer appointed under [AS 36.30.010](#);
(H) the executive director of the Alaska Workforce Investment Board;
(I) each appointed or elected municipal officer; and
(J) the members of the board of trustees, the executive director, and the investment officers of the Alaska Permanent Fund Corporation;

(10) "source of income" means the entity for which service is performed or that is otherwise the origin of payment; if the person whose income is being reported is employed by another, the employer is the source of income; but if the person is self-employed by means of a sole proprietorship, partnership, limited liability company, professional corporation, or a corporation in which the person, the person's spouse or domestic partner, or the person's dependent children, or a combination of them, hold a controlling interest, the "source" is the client or customer of the proprietorship, partnership, limited liability company, or corporation, but, if the entity that is the origin of payment is not the same as the client or customer for whom the service is performed, both are considered the source.

(b) In this chapter "state commission or board" means the

2 AAC 50.850. Notice of deficiency; remedies

(a) **Nonreceipt.** A person's failure to receive a notice of deficiency does not excuse that person's failure to mail or deliver each required filing on or before the due date for that filing.

(b) **Notice of deficiency.** Except as provided in (f) and (g) of this section, if a person required to file a registration, disclosure statement, or other report under [AS 15.13](#), [AS 24.45](#), [AS 24.60.200](#) - 24.60.260, or [AS 39.50](#) fails to file the registration, statement, or report within 10 days after the due date for that filing, the staff shall send the person responsible for the filing a written notice stating

(1) that the person's registration, statement, or report has not been filed;

(2) the date on which the registration, statement, or report was due;

(3) the amount of the civil penalty that may be assessed as of the date of the notice, and the amount by which the penalty may increase each day until the registration, statement, or report is filed.

(c) **Second notice.** In addition to the notice of deficiency described in (b) of this section, the staff shall send each public official, candidate, or legislative branch filer a second notice of deficiency in compliance with the applicable provisions of (d) - (h) of this section.

(d) **Public officials.** Except as provided in (e) of this section for a judicial officer or in (f) of this section for a municipal officer, the staff shall send a second written notice to a public official who fails to file a complete initial, annual, or final disclosure statement 25 days after the applicable due date. The second notice must contain the information set out in (b)(1) - (3) of this section and must state that

(1) failure or refusal to file the statement is punishable as a misdemeanor under [AS 39.50.060](#) ;

(2) if the statement is not received 30 days after the due date, the staff will notify the commission that the public official's statement is overdue by 30 days, and will take other action under the direction of the commission, including

(A) requesting the governor to remove the public official from office under [AS 39.50.060](#) - 39.50.080, unless the official is the governor or lieutenant governor;

(B) requesting the state agency that administers the salary, per diem, and travel expenses of the public official to withhold those payments under [AS 39.50.070](#) , 39.50.080, or 39.50.130;

(C) requesting the attorney general to initiate misdemeanor proceedings under [AS 39.50.060](#) - 39.50.080 or 39.50.130; and

(D) taking other action as appropriate to carry out [AS 39.50.060](#) - 39.50.080 or 39.50.130.

(e) **Judicial officers.** If a judicial officer, except for a person who holds judicial office for less than 30 days, fails to file a complete initial, annual, or final disclosure statement 25 days after the applicable due date, the staff shall send a second written notice containing the information set out in (b)(1) - (3) of this section. The second written notice must also state that

(1) failure or refusal to file the statement is punishable as a misdemeanor under [AS 39.50.110](#) ;

(2) if the statement is not received 30 days after the due date, the staff will notify the commission that the judicial officer's statement is overdue by 30 days, and will take other action under the direction of the commission, including

(A) requesting the administrator of the court system to withhold salary, per diem, and travel expense payments to the judicial officer under [AS 39.50.110](#) ;

(B) requesting the Commission on Judicial Conduct to refer the matter to the supreme court with a recommendation that the judicial officer be removed from office under [AS 39.50.110](#) ;

(C) requesting the attorney general to initiate misdemeanor proceedings under [AS 39.50.060](#) or 39.50.110; and

(D) taking other action as appropriate to carry out [AS 39.50.060](#) or 39.50.110.

(f) **Municipal officers.** A municipal officer's annual disclosure statement is delinquent if not filed with the applicable municipal clerk or the clerk's designee on or before March 15 of each year. No later than five days after March 15 of each year, the municipal clerk or the clerk's designee shall verify that each municipal officer has filed the statement. The municipal clerk or the clerk's designee shall notify any municipal officer whose statement is delinquent or incomplete of the filing requirement. The municipal clerk or the clerk's designee shall also notify the commission, by telephone, facsimile, or electronic mail, of the name and address of any municipal officer whose statement is delinquent or incomplete. The municipal clerk or the clerk's designee shall promptly notify the commission of the date that any delinquent or corrected statement is received.

(g) **Delinquent or incomplete statements from municipal officers; commission action.** When the commission is notified that a municipal officer's statement is delinquent or incomplete, the staff shall send written notice containing the information set out in (b)(1) - (3) of this section to that municipal officer. If a municipal officer's statement is overdue by 30 days, the commission may

(1) request the attorney general to initiate misdemeanor proceedings; and

(2) take other action as appropriate to carry out [AS 39.50.060](#) .

(h) **Candidates for state or municipal office.** In addition to the applicable procedures in (a) - (c) of this section, seven days before the primary election withdrawal date set in [AS 15.25.055](#) , the general election withdrawal date set in [AS 15.25.200](#) , and the withdrawal date for a municipal election, the staff shall prepare a list of each candidate for state or municipal elective office who has not filed a complete disclosure statement required under [AS 39.50.020](#) and 39.50.030. The staff shall notify each candidate on the list of the date, time, and place of a meeting at which the commission will consider the list. If the commission determines that a listed candidate has failed to supply required information on a significant source of income, interest in real property, business interest, loan, or trust, the commission will recommend

(1) that the lieutenant governor remove the name of the listed candidate for state elective office from the ballot, or if the candidate's name cannot be removed from the ballot, that the lieutenant governor not certify the candidate's nomination for office or election to office; or

(2) that the appropriate municipal clerk or the clerk's designee refuse a listed municipal elective office candidate's filing for office and filing fees, or return the filing and fees, and remove the candidate's name from the filing records.

(i) **Staff investigations.** If information discovered after the deadline for withdrawal of candidacy indicates that a candidate for state or municipal elective office has failed to comply substantially with the requirements of [AS 39.50](#) or 2 AAC [50.680](#) - 2 AAC [50.799](#), the staff shall investigate the matter as set out in 2 AAC [50.875](#).

History: Eff. 12/22/2011, Register 200

Authority: [AS 15.13.030](#) [AS 15.13.380](#) [AS 15.13.390](#) [AS 24.45.131](#) [AS 24.45.141](#) [AS 24.60.200](#) [AS 24.60.210](#) [AS 24.60.220](#) [AS 24.60.240](#) [AS 24.60.250](#) [AS 24.60.260](#) [AS 39.50.020](#) [AS 39.50.050](#) [AS 39.50.060](#) [AS 39.50.070](#) [AS 39.50.080](#) [AS 39.50.110](#) [AS 39.50.130](#) [AS 39.50.135](#)

From: Noah Klein [mailto:NKlein@fnsb.us]
Sent: Tuesday, April 12, 2016 9:16 AM
To: Dauphinais, Paul R (DOA)
Subject: Advisory Opinion Request

Good morning Mr. Dauphinais,

The Fairbanks North Star Borough requests an advisory opinion addressing the following:

Alaska Statute 39.50.145 enables a municipality to “exempt its municipal officers from” the public official disclosure requirements imposed under Title 39 Chapter 50. The statute further explains that the question of exemption must be put before the voters by ordinance or initiative. But AS 39.50.145 does not explicitly address whether a municipality may exempt some, but not all, of its municipal officers.

May a municipality exempt specific classes of, but not all, municipal officers as defined by AS 39.50.200(8)? More specifically, may a borough assembly ask voters to decide whether to exempt only the borough’s unpaid municipal officers — in this case planning commissioners and elected utility board members — from the requirements of Title 39 Chapter 50?

If possible, please let me know if this email is adequate to request an advisory opinion or whether a more formal request is required.

Thank you.

Noah Klein
Assistant Borough Attorney
Fairbanks North Star Borough
P.O. Box 71267
Fairbanks, Alaska 99707
907-459-1318
907-459-1155 (fax)

EXEMPT LOCAL GOVERNMENTS

EXEMPT from PUBLIC OFFICIAL FINANCIAL DISCLOSURE REQUIREMENTS UNDER AS 39.50

AS 39.50.145. Participation by municipalities. A municipality may exempt its municipal officers from the requirements of this chapter if a majority of those voting on the question at a regular election, as defined by AS 29.71.800, (20), or a special municipality-wide election, vote to exempt its municipal officers from the requirements of this chapter. The question of exemption from the requirements of this chapter may be submitted by the city council or borough assembly by ordinance or by initiative election.

Yr	City	Pop. 2010		Yr	City	Pop. 2010	Yr	City	Pop. 2010
2013	Adak	326	1	1975	Galena	470	1980	Nulato	264
N/A	Akhiok	71	199	1998	Gambell	681	1996	Nunam Iqua	187
1998	Akiak	346		1976	Golovin	156		Formerly Sheldon Point	
1990	Akutan	1,027		1991	Goodnews Bay	243	1993	Nunapitchuk	496
1976	Alakunuk	677		2000	Grayling	194	N/A	Old Harbor	218
1993	Aleknagik	219		2009	Gustavus	442	1977	Ouzinkie	161
2011	Aleutians East Borough	3,141		2012	Haines Borough	2,510	1975	Palmer	5,937
1978	Allakaket	105		1975	Homer	5,003	1975	Pelican	88
1975	Ambler	258		1976	Houston	1,912	1975/2015	Petersburg	2,948
1995	Anaktuvuk Pass	324		1990	Hughes	77	1992	Pilot Point	68
1975	Anderson	246		1988	Huslia	275	1994	Pilot Station	568
2001	Aniak	501		1975	Kachemak	472	1994	Platinum	61
2003	Anvik	85		1975	Kake	557	1997	Point Hope	647
N/A	Atka	61		1977	Kaktovik	239	1976	Port Alexander	52
1991	Atkasuk	233		1976	Kaltag	190	1979	Port Heiden	102
2012	Bethel	6,080		1978	Kasaan	49	1976	Port Lions	194
N/A	Bettles	12		2008	Kenai, City	7,100	1992	Quinhagak	669
1996	Brevig Mission	388		2008	Ketchikan, City of	8,050	1976	Ruby	166
1975	Bristol Bay Borough	997		1998	Kiana	361	1994	Russian Mission	312
1999	Buckland	416		1981	King Cove	938	2014	Sand Point	976
N/A	Cherfornak	418		N/A	Kivalina	374	1977	Savoonga	671
1998	Chevak	938		1977	Klawock	755	1993	Saxman	411
N/A	Chignik	91		1998	Kobuk	151	1979	Scammon Bay	474
1994	Chuathbaluk	118		1976	Kodiak (city)	6,130	2010	Seldovia	255
1981	Clarks Point	62		1975	Kotlik	577	2012	Seward	2,693
2008	Coffman Cove	176		1988	Koyukuk	96	N/A	Shageluk	83
2000	Cold Bay	108		2005	Koyuk	332	N/A	Shaktolik	251
1975	Cordova	2,239		1977	Kupreanof	27	1975	Shishmaref	563
1976	Craig	1,201		N/A	Larson Bay	87	1975	Shungnak	262
1975	Deering	122		1995	Marshall	414	2008	Sitka, City & Borough	8,881
2008	Delta Junction	958		N/A	Metlakatla	1,405	1998	St. George Is.	102
2008	Delta Borough (39.50)			2015	McGrath	346	1977	St. Mary's	507
2008	Denali Borough	1,826		2005	Mountain Village	813	1996	Tanana	246
1976	Dillingham	2,329		1996	Napakiak	354	1994	Teller	229
1975	Diomede	115		1999	Napaskiak	405	2000	Tenakee Springs	131
1976	Eagle	86		1975	Nenana	378	1994	Toksook Bay	590
1995	Eek	296		2013	New Stoyahok	510	1977	Unalakleet	688
2008	Egegik	109		1979	Newtok	354	1992	Upper Kalskag	210
2001	Ekwok	115		N/A	Nightmute	280	1975	Valdez	3,976
1975	Elim	330		1977	Nikolai	94	1992	Wales	145
1980	Emmonak	762		N/A	Nondalton	164	1976	White Mountain	190
1998	False Pass	35		1979	Noorvik	668	1976	Whittier	220
2009	Fairbanks, C	31,535		1995	Nuiqsut	402	2015	Wrangell	2,369

Revised April 2016

**Municipalities
Reporting POFDs to APOC**

Anchorage, Municipality of
Angoon
Barrow
Edna Bay
Fairbanks North Star
Borough
Fort Yukon
Holy Cross
Hoonah
Hooper Bay
Hydaburg
Juneau, City and Borough
Kenai Peninsula Borough
Ketchikan Gateway Borough
Kodiak Island Borough
Kotzebue
Lake and Peninsula Borough
Lower Kalskag
Manokotak
Matanuska-Susitna Borough
Mekroyuk
Newhalen
Nome
North Pole
North Slope Borough
Northwest Arctic Borough
Petersburg
St Michael
St. Paul
Selawick
Skagway
Soldotna
Stebbins
Torne Bay
Togiak
Unalaska
Wainwright
Wasilla
Yakutat

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

ALASKA PUBLIC OFFICES COMMISSION

REPLY TO:

- ☒ 2221 E. Northern Lights, Room 128
Anchorage, AK 99508
(907) 276-4176
- ☐ Juneau Branch Office
Box CO
Juneau, AK 99811-0222
(907) 465-4864

February 24, 1993

Becky Mitchell
Haines Borough Clerk
Box 1209
Haines, AK 99827

COI

re: Advisory Opinion Request Concerning the Applicability of AS 39.50 to Haines Borough
elected and appointed members of planning and zoning service area boards

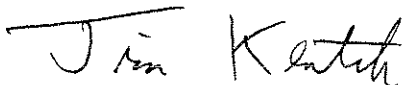
Dear Ms. Mitchell:

On January 8, 1993 Stephanie Scott of your office requested an advisory opinion to find out whether members of two service areas in the Haines Borough were required to file Conflict of Interest Statements. On February 8 staff wrote a proposed advisory opinion which concluded that these municipal officials were required to file Conflict of Interest Statements.

On February 19 the Commission considered this matter and rejected staff's proposed advisory opinion. The Commission passed a motion stating that members of the Mud Bay and Lutak service area boards in third class Haines Borough are not required to file Conflict of Interest Statements.

Please contact me if you have any questions.
Sincerely,

ALASKA PUBLIC OFFICES COMMISSION



Jim Kentch
Assistant Director

cc: APOC Commissioners
APOC Senior Staff
Nancy Gordon, Assistant Attorney General

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

REPLY TO:

- ☒ 2221 E. Northern Lights, Room 128
Anchorage, AK 99508
(907) 276-4176
- ☐ Juneau Branch Office
Box CO
Juneau, AK 99811-0222
(907) 465-4864

ALASKA PUBLIC OFFICES COMMISSION

February 8, 1993

Stephanie K. Scott
Acting Haines Borough Clerk
Box 1209
Haines, AK 99827

re: Advisory Opinion Request Concerning the Applicability of AS 39.50 to Haines Borough
elected and appointed members of planning and zoning service area boards

Dear Ms. Scott:

On January 8, 1993 you requested an advisory opinion based on the following facts. The Haines Borough has established two service areas, Mud Bay and Lutak, to provide planning, platting and zoning within their boundaries. Mud Bay was established in 1991, and Lutak in 1992. Each service area has a five member land use board. Mud Bay's board members are elected by the residents of the service area, while Lutak's board members are appointed by the borough assembly. This different method of becoming a board member is the only difference between the two boards.

Candidates for the Mud Bay board filed Conflict of Interest Statements (Statements) in 1991 under your direction. In 1992, however, based upon your revised understanding that members of service area boards were not required to file Statements, candidates for Mud Bay board did not file Statements. Members of the Lutak Service Area Land Use Board were appointed in October 1992 and have not filed Statements.

These two service area land use boards draft planning, platting and zoning ordinances and present them to the Borough Assembly for its approval. Staff's research has shown that the Haines Borough is the only third class borough in Alaska.

Question Presented: Does AS 39.50 require the members of Mud Bay and Lutak Service Area Land Use Boards to file Conflict of Interest Statements?

Short Answer: Yes.

Relevant Law:

Members of a city or borough planning or zoning commission within a home rule or general law city or borough, or a unified municipality, must file Conflict of Interest Statements. AS 39.50.200(a)(7).

All first and second class boroughs shall establish a planning commission with at least five members, and this commission is responsible for planning and regulating land use. AS 29.40.020(a)-040.

A third class borough has the same power to provide for planning, platting and land use regulations that first and second class boroughs have, except that this power may only be exercised within a service area. AS 29.35.220(c).

A third class borough is a general law municipality. AS 29.40.030(3).

Members of municipal service area boards, such as rural education attendance boards, are not required to file Conflict of Interest Statements because they are not included in the definition of "municipal officers" in the Conflict of Interest Law. 1978 Inf. Op. Att'y Gen. (Aug. 3; J66-811-78).

Analysis:

Land use service area boards are the legal equivalent of planning and zoning commissions in first and second class boroughs. The law requires first and second class boroughs to have planning and zoning commissions, and sets forth the manner of their establishment and composition. AS 29.40.020(a). If a third class borough exercises its option to enact planning, platting and land use regulations, it needs some sort of administrative body to administer these regulations. This administrative body is called a "service area board" rather than a "planning and zoning commission." AS 29.35.220(c) and AS 29.35.490(c).

Land use service area boards are also the functional equivalent of planning and zoning commissions in first and second class boroughs because they perform the same roles. In first and second class boroughs, mandatory planning and zoning commissions administer planning, platting and land use regulations. In a third class borough, service area land use boards exercise the same power and perform the same tasks as do planning and zoning commissions in first and second class boroughs. AS 29.35.490(c).

The Conflict of Interest Law requires "municipal officers" to make financial disclosure by filing a Statement. A member of a municipal land use service area board is required to file a Statement because he or she is a "municipal officer" as that term is defined within the Conflict of Interest Law. "Municipal officer" explicitly includes members of a city or borough planning or zoning commission within a general law city or borough. AS 39.50.200(a)(7). Five types of general law municipalities exist; one such type is a third class borough. AS 29.40.030(3). As explained above, Haines Borough does not have an administrative body called a "planning and zoning commission" because the law does not allow third class boroughs to have an agency with that name. Instead, Haines Borough

has two land use service area boards that perform the same duties as planning and zoning commissions in first and second class boroughs. The clear intent of the Conflict of Interest Law is to have the members of the administrative body responsible for planning and land use regulation in general law municipalities--such as a third class borough like the Haines Borough--file Conflict of Interest Statements.

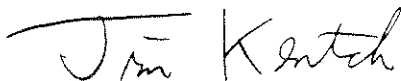
The Commission Staff reaches this conclusion despite an Attorney General's Opinion dated August 3, 1978 which initially might appear to compel another conclusion. (A copy of this opinion is attached). That opinion held that members of municipal service area boards, such as rural education attendance boards, are not required to file Statements because they are not included in the definition of "municipal officers" in the Conflict of Interest Law. However, that opinion is limited to members of rural education attendance area boards, which are not specifically listed in the definition of "municipal officers" at AS 39.50.200(a)(7). This earlier Attorney General's Opinion is not directly on point and is easily distinguishable from the question you raise. It is therefore not controlling precedent.

As required by 2 AAC 50.905, the Commission will rule on staff's proposed advice at its next meeting, February 17-19, in Juneau. The Commission may approve, disapprove or modify this proposed advice. An advisory opinion must be approved by an affirmative vote of at least four members or it will be considered disapproved. Both staff's proposed advice and the Commission's final advice apply only to the specific activity for which the advice was requested.

If you would like to appear before the Commission--either in person or telephonically--when it considers this matter, please contact me by February 12.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION

A handwritten signature in cursive script that reads "Jim Kentch".

Jim Kentch
Assistant Director

Enclosure

AUG - 4 1978

PUBLIC OFFICES
COMMISSION

TO: Randall P. Burns, Exec. Director
Alaska Public Offices Commission

August 3, 1978

FILE NO:

J-66-811-78

TELEPHONE NO

FROM:

AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT:

Application of Con-
flict of Interest and
Campaign Disclosure
Acts to service area
boards

By:

Rodger W. 
Assistant Attorney General

This is further to our memorandum of advice of July 26, 1978, on the application of Conflict of Interest and Campaign Disclosure Acts to REAA boards. You have also asked whether the Acts apply as well to persons elected to various municipal boards or appointed to fill vacancies on such boards.

The short answer is that AS 39.50 does not generally apply but that AS 15.13 does.

AS 39.50.020 requires that every "municipal officer" file a statement of his financial and business interests "within 30 days after he takes office." Candidates for municipal office must file the statement when they file for election. Municipal officials also have to file thereafter by April 15. Id.

AS 39.50.200(1) defines "public official" to include "each appointed or elected municipal officer," and AS 39.50.200(6) defines the latter to include the following specifically named officials:

1. borough or city mayor,
2. borough assemblyman,
3. city councilman,
4. school board member,
5. elected utility board member, */
6. city or borough manager,
7. members of a city or borough planning and zoning commission within a home rule or

*/ Through this point, all are elected. After this point, all are appointed.

Randall P. Burns
August 3, 1978
Page #2

general law city or borough, including but
not limited to a unified municipality under
AS 29.68.

Except that they may consequently be members of an elected
utility board, elected or appointed members of service area
boards are not on the list. Therefore, they are not within
the terms of the definition and AS 39.50 does not apply to
them.

AS 15.13.130(1) defines "candidate" to include
every person who "files for election . . . for municipal of-
fice" The Act does not define the latter term, but
it does define "municipality" as "a home rule or general law
. . . [municipality]." Id., (6). Membership on a service
area board would be a municipal office. Therefore, running
for the position would invoke the application of the Campaign
Disclosure Act, if the Act otherwise applies under AS 15.13.-
010 (population limitation and local-option exemption).

RWP/pjg



HAINES BOROUGH

Box 1209, Haines, Alaska 99827

(907) 766-2711

FAX 766-2716

January 8, 1993

Carolyn Crouch
Alaska Public Offices Commission - Anchorage
2221 E. Northern Lights Blvd. #128
Anchorage, Alaska 99508

ARRIVED

JAN 14 1993

119
APOC-ANCH
EM HC

Dear Ms. Crouch:

Please consider providing an advisory opinion (AAC 50.905) for the Haines Borough regarding the applicability of AS 39.50 (Conflict of Interest Law) to elected and appointed members of planning and zoning service area boards of directors. The relevant facts are contained in the following paragraphs.

The Haines Borough has established two service areas to provide planning, platting, and zoning to residents within the confines of the service areas. Service areas were established under the provisions of AS 29.41.010. Each service area has a board of directors, which meets publicly and regularly as provided for in the appropriate sections of the Haines Borough Code (i.e. Section 07.50.015, Mud Bay Service Area; and Section 07.70.015, Lutak Service Area. Sections are attached.)

The Boards draft the local ordinances they would like to apply to their service areas and then present them to the Borough Assembly for final approval. The Mud Bay Service Area Board was established in 1991; and the Lutak Service Area Board was established in 1992. The only difference between the two boards is that one board is elected by the residents of the service area (i.e. Mud Bay) and one board is appointed by the Haines Borough Assembly.

Mud Bay Service Area board candidates in 1991 filed conflict of interest statements with the Haines Borough under the direction of the Borough Clerk. However, the Borough Clerk did not require candidates for the Mud Bay Service Area board to file conflict of interest statements in 1992 based on an understanding garnered through communication between the Haines Borough and APOC that members of service area boards did not have to file conflict of interest statements. The Lutak Service Area board, appointed by the Borough Assembly October 20, 1992, has not been required to file conflict of interest statements.

Our question is: Since members of planning or zoning commissions are required to file conflict of interest statements, are members of service area planning and zoning commissions also required to file conflict of interest statements, even though members of service area boards of directors are ordinarily not required to file conflict of interest statements?

Thank you for your consideration. We look forward to hearing from you.

Sincerely yours,

Stephanie K. Scott
Stephanie K. Scott
Acting Borough Clerk

Unapproved Advisory Opinion, AO 16-03-POFD
xc: Sharon Van Winkle, Mayor, Haines Borough

Exhibit C
Page 7 of 11



ARRIVED

HAINES BOROUGH CODE
Chapter 07.55
SUBDIVISION CODE LUSA 1 (MUD BAY)

JAN 14 1993

APOC-ANCH

mayor retains the right to appoint members to vacant seats, subject to assembly approval, until the next regular election.

(B) The commission shall designate its presiding officer and shall meet regularly. The commission shall establish, subject to approval by the assembly, rules and regulations for conduct of its meetings. Meetings shall be public and advertised and posted at least 24 hours in advance. Minutes shall be kept of each meeting and shall be filed with the borough clerk and retained as public records.

Section 07.50.020. Borough Service Area Levy. The Borough shall pay all expenses involved in forming Land Use Service Area No. 1. Any expenses involved in administration of platting and zoning must be paid for via property taxes in the service area only. Since these expenses should be small, the Borough has the option of waiving the collection. Members of the Land Use Service Area Commission will not be compensated. (HB Ord. #89-20 ratified by special election 6/28/90)

Chapter 07.55
ESTABLISHMENT OF SERVICE AREA NO. 1 (MUD BAY)

Section 07.55.005. Subdivision Code for Land Use Service Area No. 1 - Mud Bay (HB Ord. 91-01, 4/16/91)

Section 07.55.010. Applicability. This code section shall apply to all subdivisions of land within the Land Use Service Area No. 1 (Mud Bay). It shall also apply to vacations of public land and the dedication of land to public purposes. Within the Mud Bay Service Area, the provisions of the subdivision code and H.B.C. Chapter 07.50 shall prevail over any conflicting provisions of HBC Title 11.

Section 07.55.015. Purpose. It is the purpose of this code section to:

(A) Provide for the safety, health and welfare of the citizens of Mud Bay through the regulation of platting including provisions for roads and trails, utility easements, public facilities, dedications, vacations, plat review, survey monumentation, variances, appeals and penalties.

(B) Guide the future growth in accordance with the service area goals.

(C) Establish reasonable procedures for the subdivision of land, and assure the proper legal description and monumentation of subdivided land.

:code.07(p/13) (11/92)

HAINES BOROUGH CODE
Chapter 07.50
LAND USE SERVICE AREA NO. 1 (MUD BAY)

Access Road R-O-W to its intersection with the southern boundary of that portion of Tract E, McRae Subdivision currently owned by Fred and Sue Folletti; thence due West to the western edge of the Access Road R-O-W; thence in a northerly direction to its intersection with Mud Bay Road; thence in a northwesterly direction to the true point of beginning.

Section 07.45.010. Service Provided. The services provided are for the purpose of providing road maintenance.

Section 07.45.015. State Revenue Sharing Funds. The Haines Borough shall apply for State Revenue Sharing Funds on behalf of Park Road Maintenance Service Area. In the event revenue sharing is inadequate to perform the service, the service area will not be taxed and may then be abolished. (HB Ord. 91-02, 4/16/91)

Chapter 07.50
LAND USE SERVICE AREA NO. 1 (MUD BAY)

Section 07.50.005. Establishment of Land Use Service Area No. 1. Haines Borough Land Use Service Area No. 1 (Mud Bay) is hereby established with area and boundaries as set forth in a plat appended hereto as Appendix A and whose boundaries are as follows:

Beginning at the northwest corner of Section 18, T31S, R59E, CRM; thence south on a straight line to its intersection with the south boundary line of Township 32S; thence due east on said township line to its intersection with the Tongass National Forest Boundary; thence northeasterly in a straight line to its intersection with the mean high tideline on the east side of Chilkoot Inlet; thence northerly along said line to its intersection with the northern boundary line of Section 15, T31S, R59E, CRM; thence due west on a straight line to the point of beginning.

Section 07.50.010. Services Provided. Planning, platting and zoning in accordance with Haines Borough Code, Chapter 11.

Section 07.50.015. Land Use Board. The commission shall be composed of five (5) members who are elected by qualified voters who reside in Land Use Service Area No. 1.

(A) Each term shall be for 3 years, but the first elected members shall draw lots for one, two and three year terms. The

HAINES BOROUGH CODE
Chapter 07.60
MEDICAL SERVICE AREA

parallelling the boundary of the City and Borough of Juneau to the southern boundary line of township 34 South; thence due west to the western boundary of the Haines Borough; thence northwesterly to Mt. Harris on the Alaska-Canada boundary; thence in a meandering easterly line following the Alaska-Canada boundary to Monument No. 124 at latitude 59 degrees 44' north and longitude 135 degrees 43' west; thence southeasterly to a point in the center of Lynn Canal on Taiya Inlet at approximately latitude 59 degrees 21' north and longitude 135 degrees 22.5' west; thence due east to the mean high tide line on the east side of Taiya Inlet; thence in a meandering southerly direction to its intersection with the Haines Borough boundary; thence due west to the Eldred Rock light, the point of beginning. (All of Haines Borough north of the southern tip of Sullivan Island with the exception of the east side of Lynn Canal.)

Section 07.60.010. Services Provided. The Haines Borough may provide financial support for local medical services. (HB Ord #90-01 ratified by voters in special election 6/28/90)

Chapter 07.70

ESTABLISHMENT OF LAND USE SERVICE AREA NO. 2 (LUTAK INLET)

Section 07.70.005. Establishment of Land Use Service Area No. 2. Haines Borough Land User Service Area No. 2 (Lutak Inlet) is hereby established with area and boundaries as set forth in a plat appended hereto as Appendix A and whose boundaries are as follows:

Beginning at the N.E. Corner of Section 16, Township 30 South, Range 59 East, C.R.M.; thence southwesterly to the summit of Mt. Ripinski; thence northwesterly to the summit of Tukagahgo Mt.; thence northwesterly to the summit of Mt. Kashagnak; thence northwesterly to the summit of Klutshah Mt.; thence due East on a straight line to the highest point on the ridge line between the Chilkoot River drainage and the area drained by the Ferebee River; thence in a southeasterly direction from high point to high point along said ridge line to Sanka Point on the West side of Taiyasanka Harbor; thence southwesterly to the N.E. Corner of City owned tidelands off the Haines City Dock; thence in a southwesterly direction along the Haines City Corporate Limits to the true point of beginning. The area

HAINES BOROUGH CODE
Chapter 07.70
ESTABLISHMENT OF LAND USE SERVICE AREA NO. 2 (LUTAK INLET)

proposed for annexation by the City of Haines appended hereto as Attachment A will be transferred upon successful annexation by the City of Haines.

Section 07.70.010. Services Provided. Planning, Platting and Zoning in accordance with Haines Borough Code Chapter 11.

Section 07.70.015. Land Use Commission. The Commission shall be composed of five (5) members who are appointed by the Assembly.

(A) Each term shall be for 3 years, but the first members shall draw lots for one, two and three year terms. The mayor retains the right to appoint members to vacant seats, subject to Assembly approval.

(B) The Commission shall designate its presiding officer and shall meet regularly. The Commission shall establish, subject to approval by the Assembly, rules and regulations for conduct of its meetings. Meetings shall be public and advertised and posted at least 24 hours in advance. Minutes shall be kept of each meeting and shall be filed with the borough clerk and retained as public records.

Section 07.70.020. Borough Service Area Levy. The Borough shall pay all expenses involved in forming Land Use Service Area No. 2. Any expenses involved in administration of platting and zoning must be paid for via property taxes in the service area only. Since these expenses should be small, the Borough has the option of waiving the collection. Members of the Land Use Service Area Commission will not be compensated. (HB Ord. 92-05, 4/21/92)

BY ORDER OF THE ALASKA PUBLIC OFFICES COMMISSION

IN THE MATTER OF
ONLINE AVAILABILITY
OF PUBLIC OFFICIAL FINANCIAL
DISCLOSURE STATEMENTS
BEFORE THE
ALASKA PUBLIC OFFICES COMMISSION


)
)
) RELATING TO:
) Public Official Disclosure Law AS 39.50
) Legislative Financial Disclosure Law
) AS 24.60.200-260
)
)
)

ORDER

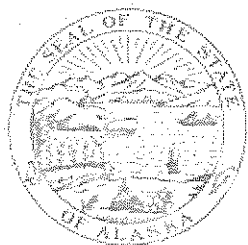
The Commission has previously verbally provided Commission Staff direction regarding making various Public Official Financial Disclosure (POFD) statements available to the public electronically. That verbal guidance has been to make the POFDs of candidates for state and municipal offices, the POFDs of the Governor and Lieutenant Governor, and the Legislative Financial Disclosure (LFD) statements of all seated legislators electronically available to the public. All other POFDs and LFDs are public documents and are available to the public upon request, but not available online. The reasoning for this guidance has been the potential for a chilling effect on membership of volunteer Boards and Commissions, difficulty in recruiting appointed members of the executive branch of government, and matters of security for judicial officers.

With this order the Commission reaffirms this guidance and creates it as policy for the Commission Staff to follow. The Commission Staff will make the POFDs of candidates for state and municipal offices, the POFDs of the Governor and Lieutenant Governor, and the LFDs of all seated legislators electronically available to the public via the agency's website. All other POFDs and LFDs are public documents and are available to the public upon request, but not available online.

Signed by Order of the Commission this 21 day of September 2015.



Kenneth Kirk, Chair
Alaska Public Offices Commission



THE STATE
of ALASKA
GOVERNOR BILT WALKER

Department of Administration

ALASKA PUBLIC OFFICES COMMISSION

2221 E. Northern Lights Blvd., Rm. 128
Anchorage, AK 99508-4149
Main: 907.276.4176
Fax: 907.276.7018
www.doa.alaska.gov/apoc

April 18, 2016

VIA: EMAIL & FIRST CLASS MAIL

Noah Klein
Assistant Borough Attorney
Fairbanks North Star Borough
P.O. Box 71267
Fairbanks, Alaska 99707
NKlein@fnsb.us

Re: Advisory Opinion Request AO 16-03-POFD

Dear Mr. Klein:

Please find the attached advisory opinion regarding your April 12, 2016, request for guidance related to exempting specific municipal public official financial disclosure (POFD) filers. The conclusion of this opinion has not yet been submitted for approval by the Alaska Public Offices Commission. AS 15.13.374. Only the Commission has the authority to approve an advisory opinion under 2AAC 50.840. The Commission will rule on staff's proposed advice at its next regular meeting.

ALASKA PUBLIC OFFICES COMMISSION

Sincerely,

Paul Dauphinais
Executive Director

cc: APOC Commission Members
Mary Lynn Macsalka, Assistant Attorney General
Senior Staff

Encl: Unapproved Advisory Opinion AO 16-03-POFD

Certificate of Service

I emailed & first class mailed a true and correct copy of the foregoing to:

Noah Klein
Assistant Borough Attorney
Fairbanks North Star Borough
P.O. Box 71267
Fairbanks, Alaska 99707
NKlein@fnsb.us

Law Office Assistant

4.18.16
Date

Schwahn, Michael F (DOA)

From: Microsoft Outlook
To: NKlein@fnsb.us
Sent: Monday, April 18, 2016 11:44 AM
Subject: Relayed: AO 16-03-POFD Unapproved Advisory Opinion

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

NKlein@fnsb.us (NKlein@fnsb.us)

Subject: AO 16-03-POFD Unapproved Advisory Opinion

Schwahn, Michael F (DOA)

From: Microsoft Outlook
To: Macsalka, Mary Lynn (LAW)
Sent: Monday, April 18, 2016 11:44 AM
Subject: Delivered: AO 16-03-POFD Unapproved Advisory Opinion

Your message has been delivered to the following recipients:

[Macsalka, Mary Lynn \(LAW\) \(marylynn.macsalka@alaska.gov\)](mailto:marylynn.macsalka@alaska.gov)

Subject: AO 16-03-POFD Unapproved Advisory Opinion



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Administration

ALASKA PUBLIC OFFICES COMMISSION

2221 E. Northern Lights Blvd., Rm. 128
Anchorage, AK 99508-4149
Main: 907.276.4176
Fax: 907.276.7018
www.doa.alaska.gov/apoc

May 23, 2016

VIA EMAIL & CERTIFIED MAIL

Noah Klein
Assistant Borough Attorney
Fairbanks North Star Borough
PO Box 71267
Fairbanks, AK 99707
NKlein@fnsb.us

RE: COMMISSION MEETING NOTICE

Dear Mr. Klein:

At its June 8, 2016 Commission Meeting in Anchorage, the Commission will review the matter of your advisory opinion request.

You have the right to participate at the meeting either in person or by telephone (1-800-315-6338, code 4176 #1). If you decide to participate please let APOC staff know that you will be doing so and whether your participation will be in person or via telephone. The Commission is expected to review your Advisory Opinion at approximately 10:15 AM on June 8, 2016.

If you have any questions please feel free to call APOC staff.

ALASKA PUBLIC OFFICES COMMISSION

Paul Dauphinais
Executive Director

Certificate of Service

I certify that on this date, I served a true copy of the foregoing document via Email and Certified Mail, Return Receipt to:

Noah Klein
Assistant Borough Attorney
Fairbanks North Star Borough
PO Box 71267
Fairbanks, AK 99707
NKlein@fnsb.us

Maria Bulfa
Law Office Assistant

5/23/2016
Date

9171-9690-0935-0107-7011-66

From: [Microsoft Outlook](#)
To: NKlein@fnsb.us
Subject: Relayed: Advisory Opinion Request, 16-03-POFD: Commission Meeting Notice
Date: Monday, May 23, 2016 9:22:38 AM
Importance: High

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:
HYPERLINK "mailto:NKlein@fnsb.us"NKlein@fnsb.us (NKlein@fnsb.us)
Subject: Advisory Opinion Request, 16-03-POFD: Commission Meeting Notice

From: [Microsoft Outlook](#)
To: [Dauphinais, Paul R \(DOA\)](#)
Subject: Delivered: Advisory Opinion Request, 16-03-POFD: Commission Meeting Notice
Date: Monday, May 23, 2016 9:22:38 AM
Importance: High

Your message has been delivered to the following recipients:
HYPERLINK "mailto:paul.dauphinais@alaska.gov"Dauphinais, Paul R (DOA) (paul.dauphinais@alaska.gov)
Subject: Advisory Opinion Request, 16-03-POFD: Commission Meeting Notice



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Administration

ALASKA PUBLIC OFFICES COMMISSION

2221 E. Northern Lights Blvd., Rm. 128
Anchorage, AK 99508-4149
Main: 907.276.4176
Toll Free in Anchorage: 800.478.4176
Email: doa.apoc.reports@alaska.gov
www.doa.alaska.gov/apoc

May 2, 2016

VIA EMAIL & CERTIFIED MAIL

Noah Klein

Assistant Borough Attorney
Fairbanks North Star Borough
PO Box 71267
Fairbanks, AK 99707
NKlein@fnsb.us

Re: Commission Meeting Notice

Dear Mr. Klein:

At its upcoming June meeting, the Commission will consider the matter of staff's proposed Advisory Opinion 16-03-POFD, requested on behalf of the Fairbanks North Star Borough.

Currently, the proposed opinion is scheduled to be considered at 10:15 a.m. on Wednesday, June 8, 2016. The meeting will take place at the offices of the Alaska Public Offices Commission located at 2221 E. Northern Lights Boulevard, Room 128, in Anchorage, Alaska.

If you are unable to attend in person, or wish to participate telephonically, please contact our office so that we can provide you with the contact information.

If you do not attend in person or participate telephonically, staff will send you a letter and a final order notifying you of the Commission's decision. If you have any questions, please do not hesitate to contact our office.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION

Paul Dauphinais
Executive Director

Certificate of Service

I certify that on this date, I served a true copy of the foregoing document via Email & Certified Mail, Return Receipt Request, to:

Noah Klein
Assistant Borough Attorney
Fairbanks North Star Borough
PO Box 71267
Fairbanks, AK 99707
NKlein@fnsb.us

Maria Bulfa 5/2/2016
Law Office Assistant Date

From: [Microsoft Outlook](#)
To: NKlein@fnsb.us
Subject: Relayed: Advisory Opinion Request, 16-03-POFD: Commission Meeting Notice
Date: Monday, May 02, 2016 1:02:51 PM
Importance: High

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HYPERLINK "mailto:NKlein@fnsb.us"NKlein@fnsb.us (NKlein@fnsb.us)
Subject: Advisory Opinion Request, 16-03-POFD: Commission Meeting Notice

From: [Microsoft Outlook](#)
To: [Dauphinais, Paul R \(DOA\)](#)
Subject: Delivered: Advisory Opinion Request, 16-03-POFD: Commission Meeting Notice
Date: Monday, May 02, 2016 1:02:51 PM
Importance: High

Your message has been delivered to the following recipients:
HYPERLINK "mailto:paul.dauphinais@alaska.gov"Dauphinais, Paul R (DOA) (paul.dauphinais@alaska.gov)
Subject: Advisory Opinion Request, 16-03-POFD: Commission Meeting Notice